judgment of the Court Mr. Justice Hilbery expressed himself thus :—

"Having regard to the evidence, it was pre-eminently a case where it was essential for the judge to make clear to the jury three possible positions in which the jury might find themselves, bearing in mind throughout that it was not for the accused to establish their innocence: that is to say (1) if they accepted the explanation of the accused, they must acquit. (2) Short of accepting that explanation, if it left them in doubt, they must acquit. (3) On consideration of the whole of the evidence they must be satisfied of the guilt of the accused of one or other of the crimes alleged against them."

It will be observed that Mr. Justice Hilbery pointed out that the summing-up should, in the particular circumstances of that case, deal specifically with the position if the jury were not sure whether the explanation was true or false, and that it was not sufficient merely to give a general direction that they must be satisfied on the whole of the evidence before finding the accused guilty. A similar view was expressed by Lord Goddard in *R. v. Hepworth*[2], in which the learned Lord Chief Justice discussed the direction to be given to a jury in the class of case, commonly known as receiving cases, where the accused gives an explanation for being in possession of stolen goods. "In a receiving case", he said, "it is generally desirable, although there may be circumstances in the particular case which would not render it necessary, first, to remind the jury that the burden of proof remains on the prosecution and, secondly, to tell them that if an explanation for possession of the goods is given by the prisoner and although the jury may not be convinced that it is true, if they think it may be true, it would mean that the prosecution have not proved the case because the jury would remain in some degree of doubt."

It is clear, therefore, that in certain cases where evidence is called for the defence giving an explanation which might entitle the accused to an acquittal, the learned Judge in his summing-up should tell the jury that even if they do not believe the explanation, nevertheless if they think it may be true and in consequence are left in some doubt as to whether the prosecution have proved the guilt of the accused beyond reasonable doubt, they should return a verdict of not guilty.

It appears to the Court that the present case is one in which such a direction should have been given. It was common ground that the appellant was carrying the parcel which contained the revolver and the only substantial issue which the jury had to consider was the explanation advanced by him as to how he came to be in possession of the parcel. The position, therefore, was not dissimilar from that which frequently arises in receiving cases where the accused admits being in possession of stolen goods, but gives an explanation which might entitle him to an acquittal; in such cases, as has been pointed out, the direction should deal specifically with the position which arises if the jury are left in doubt as to whether the explanation is true or false. So also in the present case we are of the opinion that the learned Judge in his summing-up should not only have directed the jury to acquit if they believed the appellant's explanation but should also have told them that if it left them in doubt, they should likewise return a verdict of not guilty.

For these reasons, it would, in our view, be unsafe to allow the conviction to stand. The appeal is, therefore, allowed, the conviction is quashed and the appellant is discharged.

Appeal allowed.

Solicitor : *L. Rayner.*

LEONG AH SENG v. REG.

[A. Cr. J. (Whyatt C.J.) December 7, 1955]

[Singapore — Magistrate's Appeal No. 234 of 1955]

Identification — Accused identified by complainant when accused surrounded by a group of people who gave chase and caught him.

Where the identification depended solely upon one person, namely the complainant, and was made when the accused was surrounded by a group of people who has pursued and caught him, such identification cannot be regarded as very satisfactory or reliable.

MAGISTRATE'S APPEAL.

Appellant in person.

J. F. McWilliam (Crown Counsel) for the respondent.

Whyatt C.J. : — The appellant was unrepresented on the appeal but asserted strongly from the dock that the Magistrate had been mistaken in finding him guilty of stealing these chickens. Crown Counsel agreed that the evidence for the prosecution was "sketchy". In particular the evidence did not satisfactorily explain how it came about that the accused, having run away as soon as the complainant approached him, was nevertheless found to be back on the spot surrounded by private people when the complainant returned with a police officer some considerable time afterwards. It would appear that the crowd — presumably a crowd of neighbours — had pursued the accused as he ran away, caught him and brought him back to the spot where the alleged theft took place. This theory however leaves unexplained how the crowd came to know of the accused's conduct. In fact this part of the case had to be filled in by speculation since there was no evidence on the record to explain it satisfactorily.

A further point of criticism of the prosecution's case was that the identification depended solely upon one person, namely the complainant, and was made when the accused was surrounded by a group of people and obviously at that moment, regarded by every one in the vicinity as being responsible for the theft. An identification made in such circumstances cannot be regarded as very satisfactory or reliable.

In view of the matters referred to above, I came to the conclusion that the prosecution's case had not been satisfactorily proved and accordingly I allowed the appeal.

Appeal allowed.

LYN HONG YAP v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Brown Ag. C.J. (S) and Wilson J.) December 2, 1953]

[K. L. — F.M. Criminal Reference No. 2 of 1953]

Prevention of Corruption Ordinance, 1950, s. 12 — Criminal Procedure Code (Cap. 6), s. 422 — Consent of Public Prosecutor — Validity of consent — Whether want of consent curable — Practice where a consent or sanction is required.

In this case the facts proved at the time relating to the question of consent were as follows: On June 13, 1952 the Police applied to the Magistrate at Kuala Kangsar for a summons to issue against the appellant in respect of an offence committed "on a day between 17th and 19th April 1952". On June 19 the Magistrate made an order for the Summons to issue and it was issued on June 21. On July 1, the Dy. Public Prosecutor signed a document of consent under section 12 of the Prevention of Corruption Ordinance. The charge to which the appellant was called on to plead on July 3 and on which he was tried was that he had committed an offence under section 3(b) of the said Ordinance and punishable under section 3(c). Throughout the trial in the Sessions Court not a word was said by either of the two counsel who at different times represented the appellant as to the validity of the consent of the Public Prosecutor or as to any want of consent. The point was raised for the first time at the hearing of the second appeal and then in answer to a question of Thomson J. the Dy. Public Prosecutor informed the Court after going through his papers that his colleague in office who had signed the consent of July 1, 1952 had in fact given his consent to the institution of the proceedings and indeed had instructed them to be instituted on June 2, 1952, that was some eleven days before the application for process by the Police.

Thomson J. accepted this assurance and dismissed the appeal. The learned Judge held that the want of consent under section 12 of the Prevention of Corruption Ordinance is not an omission that can be cured by reason of section 422 of the Criminal Procedure Code.

The Court of Appeal agreed with the decision of Thomson J. and held that the consent of the Public Prosecutor in this case was not defective, and that the trial of the appellant was not a nullity.

The Court of Appeal further suggested that difficulties which might arise in cases where a consent or sanction is required, could be avoided if the practice were adopted on accompanying every application for a summons or a warrant of arrest with the consent or sanction in writing.

Cases referred to:—

(1) *R. v. Bates* 6 Cr. App. R. 153.
(2) *R. v. Metz* 11 Cr. App. R. 164.
(3) *Hori Ram Singh v. R.* A.I.R. 1939 P.C. 43, 50.
(4) *Gill v. R.* A.I.R. 1948 P.C. 128, 133.
(5) *Morarka v. R.* A.I.R. 1948 P.C. 82.
(6) *Chong Tuck Loong v. Public Prosecutor* Perak Cr. App. No. 73/1952 — Unreported.

The judgment of the Court below was as follows:

Thomson J.:— The appellant in this case appeared before the Sessions Court at Kuala Kangsar on 3rd July, 1952, charged with an offence in contravention of section 3(b) of the Prevention of Corruption Ordinance, 1950. He claimed trial and was represented by Counsel. At the close of the case for the prosecution the learned President decided that there was no case to answer and acquitted and discharged him.

Against that order of acquittal and discharge the Public Prosecutor appealed and on 18th December, 1952, the appeal was allowed, the order of acquittal was set aside and the case was remitted to the Sessions Court to be further dealt with according to law. I am not concerned here with the matters that were at issue in that appeal.

On 22nd January, 1953, the case again came before the Sessions Court when the appellant was represented by a different Counsel. In the event, the appellant was convicted and fined $750 or nine months rigorous imprisonment in default of payment.

Against that conviction appellant appealed on a number of grounds the only ones of which I am concerned with here being certain grounds relating to the question of whether the consent of the Public Prosecutor given under section 12 of the Prevention of Corruption Ordinance was defective and whether therefore the Sessions Court was without jurisdiction and the trial was therefore a nullity.

The facts proved at the time relating to this question of consent are as follows.

On 13th June, 1952, the Police applied to the Magistrate at Kuala Kangsar for a summons to issue against the appellant in respect of an offence committed "on a day between 17th and 19th April, 1952". On 19th June the Magistrate made an order for the summons to issue and it was issued on 21st June. On 1st July, the Deputy Public Prosecutor signed a document in the following terms:—

Consent under Section 12.

"Under the provisions of section 12 of the Prevention of Corruption Ordinance, 1950, I, Matthew Gilbert Neal, Deputy Public Prosecutor, Perak, hereby consent to the